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70-1364
Attachment 2

15 MAY 1973

MEMORANDUM FOR: Executive Director-Comptroller
Deputy Director for Intelligence
Deputy Director for Plans
Deputy Director for Science and Technology
Director, Planning, Programming and
Budgeting

SUBJECT: Change in Procurement Policy - Contractors'
Claim for Overhead Adjustment

1. Over the past two years the Armed Services Board of Contract Appeals (ASBCA) has rendered a series of decisions in which it has determined that the Government was not liable for overruns caused by increased overhead rates. Prior to these decisions, it had been the standard practice of most Government agencies to pay these claims. The ASBCA decisions, however, clearly indicate that contracting officers are not contractually obligated to pay such claims in the absence of proper notice under the "Limitation of Cost" clause in the contract.

2. In the interest of conserving Agency funds, while at the same time encouraging contractors to examine their accounting practices to determine that they will be aware of impending overruns so proper notification can be made, the Director of Logistics recently convened a group of senior Agency contracting officers representing all Directorates to consider this matter and submit recommendations for a uniform Agency position on such claims. That group recommended that the Agency follow the several ASBCA decisions and deny such claims when the contractor has failed to meet his contractual obligations for proper notification of increased costs. It was agreed, however, that this new position should be announced in advance to all Agency contractors.

3. Letters are now being transmitted to Agency contractors advising that, in the future, the contracting officer will deny claims, whether based on increased direct or indirect costs when such claims exceed the contract funding and are incurred in contravention of contract provisions.

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4. This new uniform Agency procurement policy should cause Agency contractors to strengthen their overhead accounting procedures; provide timely notice to contracting officers when direct cost or overhead rate increases are likely to require additional funding; and thus improve the efficiency of the contracting process. Timely notice of additional costs offers the technical officer and the contracting officer several options; namely,

- a. Reduction in the scope of the contract;
- b. Termination of the contract; or,
- c. Amendment of the contract to provide additional funds.

5. Since the new policy will stress existing requirements of the contract, I believe that the Agency has a corresponding obligation to fund claims promptly when they are reasonable and otherwise legally reimbursable. I would appreciate it if each Directorate would disseminate this memorandum to all technical officers responsible for monitoring Agency external contracts so that the new uniform policy may be completely understood. Project officers receiving claims of the kind described in this memorandum should, of course, consult their Directorate contracting officer for advice on this matter.

SIGNED R. L. BANNERMAN

R. L. Bannerman
Deputy Director
for Support

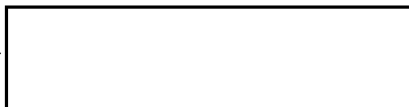
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